



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 27, 1994

Ms. Lydia Gonzalez-Gromatzky
Senior Attorney
Texas Natural Resource Conservation Commission
P. O. Box 13087
Austin, Texas 78711-3087

OR94-420

Dear Ms. Gonzalez-Gromatzky:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code (former V.T.C.S. article 6252-17a).¹ Your request was assigned ID# 22131.

The Texas Natural Resources Conservation Commission (the "commission") has received two open records requests for information relating to the Brio Refinery site in Harris County. The commission states that the requested information is protected from disclosure under sections 552.103, 552.107, and 552.111 of the Government Code.

The commission claims that the requested information is protected under section 552.103(a) because it relates to a pending federal lawsuit involving the Brio site in which the commission may intervene and/or reasonably anticipates filing separate litigation on the issue. The commission has submitted the matter for litigation to the Environmental Protection Division of the Texas Office of the Attorney General.

To secure the protection of section 552.103(a), a governmental body must demonstrate that the requested information "relates" to a pending or reasonably anticipated judicial proceeding. Open Records Decision No. 551 (1990). In this instance, you have made the requisite showing that the requested information relates to pending or anticipated litigation for purposes of section 552.103(a); the requested records may therefore be withheld.

¹The Seventy-third Legislature has repealed article 6252-17a, V.T.C.S. Acts 1993, 73d Leg., ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

In reaching this conclusion, however, we assume that the opposing party to the litigation have not previously had access to the information at issue. Absent special circumstances, once information has been obtained by all parties to the litigation, *e.g.*, through discovery or otherwise, no section 552.103 interest exists with respect to that information. Open Records Decision Nos. 349, 320 (1982). If the opposing parties in the litigation have seen or had access to any of these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). Also, the applicability of section 552.103(a) ends once the litigation has concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).²

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Government Section

LRD/JCH/KKO/rho

Ref.: ID# 22131

Enclosures: Submitted documents

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² Because section 552.103(a) resolves your request, it is not necessary to address your arguments under sections 552.107 and 552.111 of the act.